

MAY 2 5 1976 -10 00 AM INTERSTATE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of May 10, 1976,

Between

NATIONAL STEEL CAR CORPORATION, LIMITED

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

As Trustee

AGREEMENT AND ASSIGNMENT

TABLE OF CONTENTS

		Page
PARTIES		1
PREAMBLES		1
SECTION 1.	Assignments by Builder to Assignee; No Recourse	1
SECTION 2.	Builder Agrees to Construct Equipment and Warrant Title thereto; No Delivery Until Filing	2
SECTION 3.	Indemnification of Assignee; Patent Indemnification	3
SECTION 4.	Conditions to Obligation of Assignee to Pay Builder	4
SECTION 5.	Further Assignments by Assignee	9
SECTION 6.	Representation and Warranty and Agreement of Builder	9
SECTION 7.	Law Governing	10
SECTION 8.	Notice of Assignment to Railroad	10
SECTION 9.	Counterparts	10
TESTIMONIC	JM	11
	·	11
	DGMENTS	12
	DOMENT OF NOTICE OF ASSIGNMENT	13

AGREEMENT AND ASSIGNMENT, dated as of May 10, 1976, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Trustee under a Finance Agreement dated as of May 1, 1976 (hereinafter called the Finance Agreement) (said Trustee, so acting, being hereinafter called the Assignee), and NATIONAL STEEL CAR CORPORATION, LIMITED (hereinafter called the Builder).

WHEREAS, the Builder and Canadian National Railway Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

Now, Therefore, This Agreement and Assignment (hereinafter called this Assignment) Witnesseth: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

- SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:
 - (a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;
 - (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the

Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwith-

standing this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any units of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from the Railroad or special counsel for the Assignee that such filings and recordations have been effected).

The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit,

proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article

15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) prior to such Closing Date (to be held in escrow until such Closing Date) the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

- (a) A confirmation from the Builder to the Assignee confirming the transfer to the Assignee of all right, title and interest of the Builder in and to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature whatsoever (other than those created by the Conditional Sale Agreement), and warranting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;
- (b) A Certificate or Certificates of Acceptance in respect of the Equipment in such Group;
- (c) An invoice of the Builder for the units of the Equipment in such Group expressed in United States dollars based on the actual cost to the Assignee and the Railroad of the Canadian dollars used to make the payments to the Builder, provided that the Railroad's consent shall be obtained for any exchange, prior to the date of such payments (but not on the date of such payments), of United States dollars for Canadian dollars for the purpose of obtaining Canadian dollars to make such payments and provided further, that such exchange shall be made at the selling price quoted on the New York market for Canadian dollars for bank transfers in the United States for payments abroad, accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;
- (d) A certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that no Default (as defined in Article 8 of the Conditional Sale Agreement) shall have occurred and is then continuing;
- (e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (ii), (iii), (iv), (v), (vi), (viii) and (ix) of subparagraph (f) of this Section 4 (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Conditional Sale Agree-

ment and this Assignment by parties thereto other than the Railroad and that the filings specified in such clause (vi) were duly made) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and compliance by the Railroad with the terms of the Conditional Sale Agreement and this Assignment do not, and will not conflict with, or result in any breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of, any lien or encumbrance upon any of the property of the Railroad, pursuant to the provisions of the Canadian National Railway Act, the certificate of incorporation or By-Laws of the Railroad or any agreement or other instrument to which the Railroad is a party or by which it is bound;

- (f) Favorable opinions, dated as of the Closing Date, from Messrs. McCarthy & McCarthy, special Canadian counsel for the Assignee as to the matters set forth in clauses (ii) through (vi), inclusive, (viii), (ix) and (xii) of this subparagraph and from Messrs. Cravath, Swaine & Moore, special United States counsel for the Assignee as to the matters set forth in clauses (i) through (vii), inclusive, (x), (xi) and (xii) of this subparagraph:
 - (i) no approval of any governmental authority is necessary for the valid execution and delivery of, and performance of all obligations and duties set forth in, the Finance Agreement (or, if any such authority is necessary, it has been obtained) and, assuming due authorization, execution and delivery by any party thereto (other than the Assignee), the Finance Agreement has been duly authorized, executed and delivered and is a legal, valid, binding and enforceable instrument;
 - (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad in accordance with its terms;
 - (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it pursuant to this Assignment;
 - (iv) the Assignee has good and lawful title to the units of the Equipment in such Group free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement);
 - (v) no approval of the Canadian Transport Commission or the Interstate Commerce Commission or any other governmental au-

thority is necessary for the valid execution and delivery of, and performance of all obligations and duties set forth in, the Conditional Sale Agreement or, if any such authority is necessary, it has been obtained;

- (vi) the Conditional Sale Agreement, this Assignment, and the Agreement of Bailment (hereinafter called the Bailment) dated as of April 27, 1976, between the Builder and the Railroad covering the Equipment have been duly deposited in the Office of the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada (and notice of such deposit has been duly published, or adequate provision has been made therefor, in The Canada Gazette as provided in said Section 86) and duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other registration, deposit, filing or recordation is necessary for the protection of the rights of the Assignee in Canada or in any province or territory thereof, in any state of the United States of America or in the District of Columbia;
- (vii) registration of the Finance Agreement, the Conditional Sale Agreement, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;
- (viii) no income tax is payable under Part XIII of the Income Tax Act of Canada on any payments under the Conditional Sale Agreement made by the Railroad to the Assignee, and the Railroad is not required to withhold any such tax from such payments;
- (ix) the Railroad does not enjoy any special immunity or status in Canada that would, in respect of any action with respect to the Conditional Sale Agreement, this Assignment or the Equipment, provide the Railroad with a defense that is not available to others; the Railroad under Canadian law may be sued in contract and in tort by the Assignee in the Canadian courts in the same manner as any other corporation or individual; and, under Canadian law, the Assignee has the right to repossess the Equipment in accordance with the provisions of Article 17 of the Conditional Sale Agreement;
- (x) the opinion of counsel for the Railroad and the Builder delivered pursuant to this Section 4 are each satisfactory in scope, form and substance to special United States counsel for the Assignee and, in the opinion of said special counsel, the Assignee is justified in relying thereon.

- (xi) the certificates of interest delivered pursuant to the Finance Agreement have been duly authorized, executed and delivered by the Trustee under the Finance Agreement.
- (xii) such opinion shall also cover such other matters as may reasonably be requested by the Assignee.
- (g) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and (iv) the Builder has transferred good and lawful title to the units of the Equipment in such Group to the Assignee free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement) arising by, through or under the Builder; and
- (h) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified above, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (e) and (f), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement; and in giving its opinion, special United States counsel may rely as to any matter governed by the laws of Canada or any Province or Territory thereof on the opinion of special Canadian counsel for the Assignee and special Canadian counsel may rely as to any mat-

ter governed by the laws of the United States or any State thereof, on the opinion of special United States counsel for the Assignee.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

- (a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it in accordance with its terms and that it is now in force without amendment thereto;
- (b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein-

above set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will, upon payment in full of all amounts payable to the Builder hereunder and under the Conditional Sale Agreement, execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

NATIONAL STEEL CAR CORPORATION, LIMITED

President

[CORPORATE SEAL]

Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Trustee

Assistant Vice President

[CORPORATE SEAL]

Attest:

Corporate Trust Officer

PROVINCE OF ONTARIO, CITY OF HAMILTON, SS.:

On this 2/day of May, 1976, before me personally appeared IF Rancey and May, 1976, to me personally known, who, being by me duly sworn, says that they are the President and the Secretary, respectively, of NATIONAL STEEL CAR CORPORATION, LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

STATE OF MARYLAND, CITY OF BALTIMORE, SS.:

On this /9/h day of May, 1976, before me personally appeared LAMES H. CLARK to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Notany Public

NOTARY PUBLIC
Y Commission Explicit July 1, 1879

My Commission expires 7-1-78

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

CANADIAN NATIONAL RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of May 10, 1976.

CANADIAN NATIONAL RAILWAY COMPANY,

Vice President

Muller

SOLICITOR

APPROVED